



# **FILLING A VACANCY**

AN ANALYSIS OF THE LARGEST  
CHARTER CITIES IN OHIO

# HISTORICAL OVERVIEW

- This report provides an overview of the various components of filling vacancies in the 7 largest cities in Ohio that are governed by a Charter, including:
  - whether each city's Charter incorporates appointments, special elections, a hybrid, or remains silent on these issues;
  - the corresponding forms of government and council; and
  - and a specific timeline for filling a vacancy.

# HISTORICAL OVERVIEW

- To best understand the process for filling a vacancy in Columbus, review the Columbus City Charter with historical context.
- Amendments to the vacancy process were conducted by a Charter Review in 1993, 1998, and 2014.
- In 1993, the Charter Committee recommended that City Council appointees seek election at the next scheduled election.
  - Voters passed this amendment to the Columbus City Charter with a vote of 91,173 yes – 33,649 no. It was adopted on November 8, 1994.

# HISTORICAL OVERVIEW

- The 1998 Charter Review Committee recommended no change to the process of electing members to Columbus City Council.
  - As a side note, an update to the entire Charter for gender neutral language was included.
- In 2014, Sections 5.1 and 5.2 were added to provide for vacancies occurring due to temporary and permanent disability
  - Voter approval on November 4, 2014 with 122,302 voting yes and 27,391 voting no.

# HISTORICAL OVERVIEW

- The most recent proposed amendments to Section 5, to expand City Council and include district representatives, were defeated during the recent special election at an approximate cost of \$1.3 million.
  - On August 2, 2016, by a public vote of 35,456 against and 14,163 in favor

# ISSUE OVERVIEW

- An analysis of the 7 largest Charter cities includes:
  - Akron
  - Cincinnati
  - **Columbus**
  - Cleveland
  - Dayton
  - Toledo
  - Youngstown
- Though there is no uniformity, all of these 7 cities offer provisions regarding the process of filling a vacancy in their respective Charters.
  - Youngstown defers, in some respects, to state law regarding the vacancy and appointment process.
- Each city handles the process to fill a vacancy differently and possesses diverse attributes.

# APPOINTMENTS

- Six out of seven cities (86%) have an appointment protocol
  - Akron
  - Cincinnati
  - **Columbus**
  - Cleveland
  - Toledo
  - Youngstown
- Dayton has none.

# FORM OF GOVERNMENT

- Of those that have an appointment process, six out of seven (86%) have a Mayor-Council form of government
  - Akron
  - Cincinnati
  - Cleveland
  - **Columbus**
  - Toledo
  - Youngstown
- Dayton has Commission-Manager governance.



# FORM OF COUNCIL

- Three out of seven (43%) have an at-large form of council
  - Cincinnati
  - **Columbus**
  - Dayton
- Three out of seven (43%) have a hybrid form of council
  - Akron
  - Toledo
  - Youngstown
- Cleveland has a ward system.

# Number of Council/Commission Members

- There is no consistency among these seven largest Charter cities.
  - Akron – 10 Ward, 3 At-Large
  - Cincinnati – 9 At-Large Members
  - Cleveland – 17 Ward Members
  - **Columbus** - 7 At-Large Members
  - Dayton – Mayor & 4 Commissioners
  - Toledo – 6 Ward, 6 At-Large
  - Youngstown – 7 Ward, 1 President of Council

# SPECIAL ELECTIONS

- One of seven, (14%) holds a “special election” for vacancies
  - Dayton
- Four of seven (57%), hold an election for the council vacancy simultaneously with the regularly scheduled elections
  - Akron
  - Cleveland
  - Columbus
  - Toledo
- Two out of seven (29%) do not hold special elections for vacancies
  - Cincinnati
  - Youngstown

# APPOINTMENT PROCESS

Each city has a unique approach to the appointment process

- Successor Appointed by Council
  - Cleveland
- Successor Appointed by Designation Certificate Process; then Elected by Legislative Authority; then Appointed by Mayor
  - Cincinnati
- Successor Elected by Council
  - Toledo
- Successor Appointed Through Internal Election by Council, then Appointed by Mayor
  - Akron
  - **Columbus**
- Successor Appointed by Partisan Committee; then Elected by Legislative Authority; then Appointed by Mayor
  - Youngstown

# TIMELINE FOR FILLING VACANCY

- Akron
  - If next regularly scheduled primary elections at which all electors of the City are eligible to vote is *greater than 60 days*, Council members must, *within 30 days* of the occurrence of such vacancy, elect a qualified person to fill the vacancy.

# TIMELINE FOR FILLING VACANCY

- Cincinnati
  - Vacancy must be filled *within 60 days* of vacancy by a majority vote of Council;
  - *If within 60 days*, certified members cannot fill the vacancy, may fill by a majority vote within 30 days after certified expiration date.
  - If no valid/effective successor designation certificate, then *within 30 days*
  - Mayor shall appoint the successor without consent of Council, if above three listed conditions not met

# TIMELINE FOR FILLING VACANCY

- Cleveland
  - If the vacancy occurs at any time which is *more than two years* before the next regular municipal election, the person selected by the Council to fill the vacancy will hold office until the person's successor is elected at a special municipal election.
  - If the general election is *not less than 160 days nor more than one year* after the occurrence of the vacancy, a special primary election to nominate candidates for the vacancy shall be held *on the 8<sup>th</sup> Tuesday* prior to the general election.

# TIMELINE FOR FILLING VACANCY

- **Columbus**

- Council has *30 days* to appoint member or Mayor can vote in future balloting to fill vacancies.
- Appointed member fills seat until January 1 following next regular municipal election.



# TIMELINE FOR FILLING VACANCY

- Dayton
  - Holds special election not earlier than *60 days nor later than 90 days* after the vacancy occurs
- Toledo
  - For an at-large member, a successor is chosen at the next regular municipal election occurring more than 90 days after the date of the vacancy.
  - For a district member, vacancy is filled at the next primary or general election occurring more than 45 but less than 180 days after the vacancy.

# TIMELINE FOR FILLING VACANCY

- Youngstown
  - Charter is silent and defers to the Ohio Revised Code
  - *Not less than 5 nor more than 45 days* after a vacancy occurs, the specified members of the city or county committee shall meet to make an appointment to fill the vacancy. *At least 4 days* before the date of such meeting the chairperson or secretary of the city or county committee shall notify each committee member eligible to vote on filling the vacancy. Under certain circumstances, the legislative authority elects the successor *within 30 days* or the Mayor makes the appointment.

# BEST CITIES INDEX

- **Columbus is listed as 30<sup>th</sup> on the Best Cities Index; Cleveland, 60<sup>th</sup>**

# BOND RATINGS

- Ratings
  - **Aaa:** This is pronounced “triple-A”. This is the highest rating Moody’s assigns issuers and individual bond issues. This is the strongest category of creditworthiness.
  - **Aa:** Pronounced “double-A”. This the next highest tier of Moody’s. It implies very strong creditworthiness.
  - **A:** Pronounced “single-A”. This is the third highest tier. It implies above average creditworthiness.
  - **Baa:** Pronounced “B double-A”. This is the fourth highest tier and the lowest tier of what is generally considered ‘investment grade’. This implies average creditworthiness.
  - Moody’s also adds a numerical number from 1 to 3 within each rating category for everything other than Aaa-rated bonds (triple-A).
- Akron – A1
- Cincinnati – Aa2
- Cleveland – A1
- **Columbus – AAA**
- Dayton – Aa2
- Toledo – A2
- Youngstown – Baa1

# **FILLING A VACANCY**

## **Columbus**

- Vacancies must be filled by City Council within 30 days from the date of vacancy, or the Mayor will have a vote in all future balloting regarding the filling of vacancies. A successor is appointed by City Council and serves until the first day of January following the next regular municipal election. In the case of a regular election, the council member will be elected to a four year term. Otherwise, the appointed council member will serve for the rest of the unexpired term.

# FILLING A VACANCY

## Akron

- If a Council member vacates leaving  $\frac{1}{2}$  or less of the term, the remaining Council members elect a “qualified individual” to serve the remainder of the term. If the unexpired term is more than  $\frac{1}{2}$  of the term, the vacancy is filled, and nominees are selected, by elections that are held at the same time and manner as the next regularly scheduled primary and general elections.
- If the period of time between the occurrence of a vacancy and the next regularly scheduled primary elections is greater than 60 days, the members of Council must, within 30 days of the occurrence of the vacancy, elect a qualified person to fill the vacancy to serve until the remainder of the unexpired term created by the vacancy. If Council fails within 30 days to fill the vacancy, the Mayor must fill it by appointment.

# FILLING A VACANCY

## Cincinnati

- Cincinnati's Charter for vacancies has been amended multiple times over the last 30 years.
- A member-elect of Council is required to file a successor designation certificate certifying one or more fellow Council members to appoint a successor in the event of a vacancy. Council members certified by the former member must name a successor within 60 days of the vacancy by a majority vote. The signed designation is filed with Council within the 60-day period and must be presented by council at its next regular meeting. If no valid and effective successor designation certificate exists, the Council may fill the vacant office by a majority vote of the remaining members within 30 days of the vacancy. If certified Council members fail to designate a successor within 60 days of the vacancy, Council may fill the vacant office by a majority vote of the remaining members within 30 days after the time allowed for the certified members' designation has expired. If Council fails to fill the vacancy within the time prescribed, the Mayor appoints the successor without the consent of Council. A person designated as a successor or named to fill the vacancy by action of Council or the Mayor, upon taking the oath of office, will have the status of a member of Council elected for the unexpired term.

# FILLING A VACANCY

## Cleveland

- A vacancy shall be filled by Council for the unexpired term. However, if the vacancy occurs at any time which is more than 2 years before the next regular Municipal election, the person selected by the Council to fill the vacancy will hold office until a successor is elected by special municipal election. If a general election is held on a date not less than 160 days nor more than 1 year after the occurrence of the vacancy, the special municipal election is held at the general election and a special primary election to nominate candidates for the vacancy is held on the 8th Tuesday prior to the general election. A primary election is held on the 1<sup>st</sup> Tuesday after 100 days from the date of vacancy and on the 8<sup>th</sup> Tuesday following the primary election for special municipal election. The person who is elected holds office for the unexpired portion of the term until a successor assumes office immediately upon election and qualification.



# **FILLING A VACANCY**

## **Dayton**

- Commissioner vacancies are filled by special election and held on a date that is determined by ordinance. The date cannot be earlier than 60 days nor later than 90 days after the vacancy occurs, with the exception of a vacancy resulting from a recall election. No recall petition can be filed against a Commissioner within 6 months after assuming office. In the event of a recall election of Commissioners, candidates to fill the vacancy are nominated by petition signed by “...five percent of the registered electors” and filed with election authorities at least 30 days prior to the date of the recall election.

# FILLING A VACANCY

## Toledo

- If there is a vacancy from a district or at-large, the vacancy is filled first by appointment or succession and then for the unexpired term by election. For a Member of Council at-large vacancy, an election for the unexpired term is held at the next general election occurring more than 90 days after the date of the vacancy. Candidates must file nominating petitions with the election authorities not later than the 60<sup>th</sup> day before the election. If the vacancy occurs in the year that the election for that office is already scheduled, the appointed person serves until a successor is elected and qualified.
- If there is a vacancy from a district, the vacancy is filled at the next primary or general election occurring more than 45 but less than 180 days after the date the vacancy occurred. If no primary or general election is scheduled during that time period, the vacancy is filled at a special election on the next available special election date as specified in state law occurring more than 45 days after the vacancy occurred. Each prospective candidate to fill the unexpired term files nominating petitions with the election authorities not later than the 10<sup>th</sup> day after the date of vacancy, or on the 40<sup>th</sup> day before the date of the election, which is later. When the vacancy occurs less than 6 days before the 40<sup>th</sup> day before the election, the deadline for filing is the 36<sup>th</sup> day before that election.
- If the election to fill an unexpired term occurs on the same date as a regularly scheduled primary or general municipal election held to nominate or elect an individual to serve for the next term, or within 60 days prior, there is no election for the unexpired term. The appointee serves until the new officer is elected and qualified for the next succeeding term.

# FILLING A VACANCY

## Youngstown

- If the Mayor dies, is removed, or resigns, the President of Council becomes the Mayor and serves for the unexpired term, and until the successor is elected. The President pro tem of Council then becomes President. The vacancy created in Council is filled as other vacancies and Council elects another President pro tem. Since the filling of a vacancy and the appointment process are not specified for other Council members, it appears that state law governs.
- If a member vacates the office before the end of the member's term or a member-elect fails to take office, the vacancy is filled for the remainder of the unexpired term by a person chosen by the residents who are members of the county central committee of the political party by which the last occupant of that office or the member-elect was nominated. If the vacancy occurs in the office of a ward representative in a city where the political party which nominated the last occupant of that office is organized into a city controlling committee with more than one member from the ward where the vacancy exists, the members of the city controlling committee representing that ward choose the person to fill the vacancy.
- Specified members of the city or county committee meet to make an appointment to fill the vacancy not less than five nor more than 45 days after a vacancy occurs. A majority of all eligible committee members constitutes a quorum, and a majority of the quorum is required to make the appointment. If election to the office takes place at a nonpartisan election, or if the office was occupied by, or was to be occupied by a person not nominated at a primary election, or if the appointment was not made by the committee members in accordance with this section, the vacancy shall be filled in the same manner as a vacancy in the legislative authority of a village. In that case, when the office of a member of the legislative authority becomes vacant, the vacancy will be filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill such vacancy, the Mayor fills it by appointment except when the office of the Mayor has been vacated, the successor shall hold office only for the period the President pro tempore holds the office of Mayor.

# FOR COMPARATIVE PURPOSES

## Filling vacancy in United States Senate.

- When a vacancy occurs in the representation of Ohio in the senate of the United States by death, resignation, or otherwise, the vacancy *shall be filled forthwith by appointment* by the governor who may appoint some suitable person having the necessary qualifications for senator. The appointee shall hold office until the 15th day of December succeeding the next regular state election that occurs more than one hundred eighty days after the vacancy happens. At that next regular state election, a special election to fill the vacancy shall be held, provided, that when the unexpired term ends within one year immediately following the date of such regular state election, an election to fill the unexpired term shall not be held, and the appointment shall be for the unexpired term. The special election shall be governed in all respects by the laws controlling regular state elections for such office. Candidates to be voted for at the special election shall be nominated in the same manner as is provided for the nomination of candidates at regular state elections.
- At least 180 days prior to the date of such regular state election, the governor shall issue a writ directing that a special election be held to fill such vacancy as provided in this section. The writ shall be directed to the secretary of state and a copy of the writ sent by mail to the board of elections of each county in the state which shall give notice of the time and place of holding such special election in the same manner and at the same time provided in section 3501.03 of the Revised Code for giving similar notice for regular elections.

# CONCLUSION

- Ohio's top 7 cities: no conformity or best practice exists to fill a vacancy.
- Substantial differences:
  - various timeline requirements
  - whether and how they hold special elections
  - council structure and number of members
  - forms of government
  - Dayton has no appointment process, while other cities provide extremely elaborate procedures for filling vacant seats.
- Any decision regarding modification to the Columbus City Charter might be best considered in terms of whether the current process affords a sensible approach or if another method would offer a significantly enhanced benefit to its residents.